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In re Application of: :
Briel et al. :
Application No.: 09/980636 : DECISION
PCT No.: PCT/GB01/01563 :
Int. Filing Date: 05 April 2001 : ON
Priority Date: 5 April 2000 :
Atty. Docket No.: 36-1642 : PETITION
For: Data Management System :
:

This is in response to the "Petition Under Rule 47(A)" filed on 05 December 2001.

BACKGROUND

This international application was filed on 05 April 2001, and claimed an earliest priority date of 05 April 2000. The International Bureau transmitted a copy of the published international application to the USPTO on 11 October 2001. No Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Accordingly, the period for paying the basic national fee in the United States expired as of midnight on 05 December 2001.

On 05 December 2001, applicant filed the basic national fee accompanied by, *inter alia*, a Transmittal Letter and the instant petition.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. Petitioner has satisfied requirements (1), (3) and (4).

Regarding requirement (1), the petition is accompanied by the required petition fee.

Regarding requirement (2), the evidence now of record is insufficient to establish that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort. The evidence includes a copy of an e-mail message from non-signing inventor William Brook, dated 22 May 2001, which states that, at that time, "I'd like to see some signs of movement

before I start spending my valuable time helping AT & T and BT receive the patent if it is due." This statement does not directly and specifically demonstrate that Mr. Brook *refuses to execute and oath or declaration*. Moreover, this e-mail is dated more than six months prior to the date the instant petition was filed. Petitioner has neither alleged nor shown whether Mr. Brook still allegedly refused to sign an oath or declaration as of the filing date of the petition. Meanwhile, the e-mail from Simon Roberts dated 16 May 2001 is not persuasive because it is not a verified statement from a party having direct knowledge of the facts alleged. Also, petitioner does not allege or show that a complete copy of the application papers (description, claims, drawings, abstract and declaration) was presented to Mr. Brook for his signature. Furthermore, regarding paragraph (16) of the "Declaration of Roger Nash," Mr. Nash does not identify the date and time of the alleged oral refusal. As such, requirement (2) has not been satisfied.

With respect to requirement (3), the petition includes a statement of the last known address of the missing inventor.

With respect to requirement (4), the petition is accompanied by an appropriate declaration.

For the reasons discussed above, it would not be appropriate to grant the requested relief on the basis of the present record.

CONCLUSION

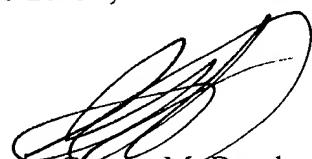
The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Failure to timely file a proper response will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47." Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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